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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,923

Applicant(s)

WISEMAN, MICHAEL D.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 15-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s).

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/13/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

This is the first office action for application number 10/822,923, Adjustable Position Mounting Device, filed on April 13, 2004.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "132" in Fig. 1 and "254a" and "254b" in Fig. 13. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because the lead line for reference character "200" in Figs. 2-4, the lead line for reference character "250" in Fig. 5, the lead line for "300" in Fig. 13, the lead line for "400", in Fig. 15, the lead line for "500" in Fig. 16 and the lead line for "600" in Fig. 18 are incorrect, see MPEP 608.02 in regards to lead lines; and "352b" left and "350b" bottom in Fig. 13 appear to be referring to the same element.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "354a," "354b," "562a," "562b," and "562c". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: on page 10, paragraph 46, line 11 "262c" appears to be incorrect and should be --362c--; on page 10, paragraph 48, line 8, "51b" appears to be incorrect and should be --512b--; on page 10, paragraph 48, line 9, "514bt" appears to be incorrect and should be --514b--; and on page 10, paragraph 48, line 10, "512brelative" should be --512b relative--.

Appropriate correction is required.

Claim Objections

Claims 2 and 19 are objected to because of the following informalities: in claim 2, line 1 the phrase "a first and second piece of equipment" should be changed to --first and second pieces of equipment-- and in claim 19, line 2, the phrase --the steps of-- should be inserted after "comprising". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 5, 6, 7, and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the base member" bridging lines 4 and 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "a second pair of cross members" bridging lines 1 and 2, this would imply that a first pair of cross members has been previously claimed, since this is not the case, the claim is rendered indefinite.

Claim 6 recites the limitation "a second mounting plate" in line 2, this would imply that a first mounting plate has been previously claimed, since this is not the case, the claim is rendered indefinite.

In regards to claim 18, there is an inconsistency in the language of claim and the parent claim 2 making the scope of the claim unclear. The preamble in claim 2 clearly indicates that a subcombination is being claimed, e.g., "a skid for mounting a first and second pieces of equipment...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a skid," the first and second piece of equipment being only functionally recited. This presents no problem as long as the body of the claim also refers to the first and second equipment functionally.

The problem arises when the first and second pieces of equipment is positively recited within the body of the claim, such as, "wherein the first piece of equipment is a pump and the second piece of equipment is a motor for driving the pump," in claim 8. There is an inconsistency within the claim; the preamble indicates subcombination,

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while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of a skid and first and second pieces of equipment are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the skid or the skid in combination with the first and second pieces of equipment.

Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,216,933 to Cramer. Cramer discloses a device for adjusting the vertical position of an object relative to a supporting surface, the device comprising: a base (10') adapted for placement on the supporting surface; a support member (41, 43) adapted for placement

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adjacent the object; vertical positioning means (44) for providing adjustment of the vertical position of the support member relative to the base, and thereby adjustment of the vertical position of the object relative to the supporting surface; and securing members (45) for selectively fixing the vertical position of the support member relative to the supporting surface.

Claims 1-5, 8, 11-13, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,021,100 to Verhota. In regards to claim 1, Verhota discloses a device (10) for adjusting the vertical position of an object relative to a supporting surface, the device comprising: a base (12-26) adapted for placement on the supporting surface; a support member (36) adapted for placement adjacent the object; vertical positioning means (48) for providing adjustment of the vertical position of the support member relative to the base, and thereby adjustment of the vertical position of the object relative to the supporting surface; and securing members (50) for selectively fixing the vertical position of the support member relative to the supporting surface.

In regards to claims 2-5, 8, 11-13, and 18, Verhota discloses a skid (10) for mounting a first (58) and second (56) equipment requiring horizontal axial alignment, the skid comprising: a pair of laterally disposed base members (28 and 30); a first support member (36) for supporting the first piece of equipment; a second support member (36) for supporting the second piece of equipment; wherein at least one of the first and second support members is releasably attached to and between the pair of base members and is adjustably positioned relative to the pair of base members to

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substantially provide the required horizontal axial alignment of the first and second pieces of equipment; wherein the second support member is releasably attached to and between the pair of base members and is adjustably positioned in the vertical direction relative to the pair of base members; wherein the second support member comprises a second pair of cross members and wherein each of the second pair of cross members is releasably attached at their ends to and between the pair of base members forming a right parallelogram and is adjustably positioned in the vertical direction relative to the pair of base members; wherein the first support member comprises a first pair of cross members, wherein each of the first pair of cross members is attached at their ends substantially perpendicular to the base members forming a right parallelogram; wherein the first support member is releasably attached to and between the pair of base members and is adjustably positioned in the vertical direction relative to the pair or base members; and wherein the first piece of equipment is a machine (that can be a pump) and the second piece of equipment is a motor for driving the pump.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4, 033,531 to Levine. Levine inherently teaches the method of for adjusting the vertical position of a support member (12, 28) relative to a pair of base members (24, 26), the method comprising: providing the support member having an upper support surface and at least a pair of end surfaces with a first plurality of holes (30') vertically disposed on and horizontally extending through the pair of end surfaces; providing the base members with a second plurality of holes (30), wherein each of the pair of base members has a vertical surface and an upper horizontal surface; placing the support

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member between the pair of base members; selecting a first set of horizontally aligned holes from the first plurality of holes and the second plurality of holes corresponding to a selected vertical relative placement between the upper support surface and the upper horizontal surface; and releasably engaging the first set of horizontally aligned holes with a first plurality of securing members (32) to fix the vertical position of the upper section relative to the upper horizontal surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 9, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verhota in view of U.S. Patent 2,828,931 to Harvey. Verhota discloses the claimed invention except for the limitations of first and second mounting plates. Harvey teaches a skid for handling machinery comprising a frame member (11) having a pair of base member (15) and support members (12), first and second mounting plates (Fig. 1) having a pair of opposing edges and pairs of side walls extending perpendicularly from the opposing edges, and wherein the support members are releasably attached at the pair of side walls to and between the base members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the skid in Verhota to have included the mounting plates as

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taught by Harvey for the purpose of providing a means for reinforcing the stability and supporting strength of the skid.

Allowable Subject Matter

Claims 15-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 1,974,158 to Okenfuss

U.S. Patent 2,092,919 to Johnson

U.S. Patent 3,493,201 to Marran

U.S. Patent 4,572,474 to Derlich

U.S. Patent 4,723,756 to Stumpf, Jr.

U.S. Patent 5,085,396 to Mansson

U.S. Patent 5,110,082 to Rowan, Jr.

U.S. Patent 5,497,708 to Jeruzal

U.S. Patent 6,006,676 to Creek et al.


U.S. Patent 6,464,192 to Gibbs, Jr.

Okenfuss discloses a machine base having adjustability. Johnson discloses a supporting base for an electric motor device. Marran discloses a universal support base for pump compressors. Derlich discloses a mounting assembly for machines. Stumpf, Jr. discloses a portable adjustable stand and lift for a motorcycle. Mansson discloses a bed structure for supporting driving and driven units. Rowan, Jr. discloses an adjustable support system for use in anchoring a machine to a foundation. Jeruzal discloses a multiple section pallet assembly. Creek et al. disclose a modular packing skid. Gibbs, Jr. Discloses a vehicle support apparatus having plural telescoping vertical supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

April 14, 2005